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In soliciting the aid of men known to be interested in the topic of transportation, your committee have been agreeably surprised to receive such ready responses of interest in the work and promises of help of whatever kind they could render from men in every part of the country and in every branch of business. The names printed as honorary members of our committee include only a few of those who have expressed themselves as willing to coöperate with us.

The fixing of the meeting at the present time instead of in September, as I had anticipated, interfered with certain contributions which I had been led to expect from some of the honorary members of the committee. I have good reason to hope that we shall have some substantial aid in our work of investigation in the future, not only from the gentlemen named in this list, but from others as well who have signified their willingness to assist.

It was the desire and intention of the chairman of your committee to present at this meeting a report which should contain some substantial contribution to one or another of the phases of the great subject which you have assigned us. It has been found impossible, however, to prepare, in time for this meeting, any report which, while treating of any of the great mooted questions, would command the hearty assent of all the members of the committee. It has appeared, therefore, best to make our report on this occasion rather a statement of our proposed plan of work, and to submit in connection with it the papers which you will find announced in our programme as contributed by the various members of the Association.

The subject of transportation which you have assigned to us is one of the broadest and most important in the whole field of economic investigation. It concerns a set of economic institutions and forces which exist in some form or other in even the most primitive societies, and whose importance increases with every increase in population and wealth. It is impossible to conceive of any advance in civilization which is not preceded or accompanied by a new development of commerce, using that term in the widest sense. And as society advances it is absolutely necessary that the system of transportation and communication should be also developed. If at any time in the progress of a nation the means and facilities of transportation were suddenly and permanently abridged, there would surely follow stagnation, if not decay and ruin. Important as they are to any and all stages of society, they are of almost infinite importance to a society like our own, where, owing to the division of labor and the elaborate system of exchange, so large a portion of our wealth passes through the agencies of transportation and is affected by the character of the system.

The subject has many different aspects, a few only of which fall within the scope of our investigation. The development of a system of transportation depends, of course, very largely on technical discoveries and inventions. The discovery of the expansive power of steam, the invention of the thousand and one devices necessary to the utilization of this power, the machinery necessary to dig and grade, and manufacture the rails and construct the road-bed, etc., are all necessary elements in any progress in this field. With all these things, however, we

have nothing to do, except so far as any particular social, economic, or legal system may favor or discourage improvements along these lines.

On the other hand, the development of a system of transportation and communication depends also, and quite as much perhaps, on an entirely different set of conditions, viz. : the policy of society and the government in reference to the development and organization of such a system. In the development of the facilities for transportation, government has, in all civilized countries taken an active and promoting share. In certain matters it is absolutely necessary to call upon it for its coöperation and assistance. The laying out and construction of roads, the improvement of rivers and harbors, the digging of canals, the organization of corporations, all necessitate the exercise of what is essentially a governmental power, whether it proceeds directly from a regularly constituted civil government or from the initiative of men, who for the time being exercise the necessary authority.

Take, for example, a railroad. It would certainly have been impossible to develop the railway system to anything like its present extent, or to the importance which it now possesses for our modern life, without the exercise of the right of eminent domain. And this right is peculiarly a government prerogative. It would have been impossible to collect the capital necessary to construct the roads in their present form without some kind of joint-stock association, with limited liability and ready transference of stock and bonds. This could be created and guaranteed only by the action of government. A railroad corporation is a pure creature of law,

every quality and faculty of which must find its source in positive enactment. It is impossible to protect the rights of those who are dependent upon the railway except by positive interference of government, creating new rights and duties, enlarging and confirming old ones, and providing new and more efficient remedies. There is not a single provision in a railway charter, or general railway law, from beginning to end, which does not demonstrate the controlling and shaping power of government. Every clause either confers or withholds power, or determines the way in which it may be exercised. And in connection with every one of these the questions arise, Should it be so or so, and why or why not?

Here, then, is a department of political economy in which government activity of some sort is absolutely necessary, since no activity at all is activity of the most intensive kind. Here, therefore, he who believes in the desirability of extending government functions in certain directions, and he who believes that they should be still further limited, may join in earnest and serious investigation to determine, as far as possible, the effects which will be likely to flow from one or another line of policy. And what is true of the railway is true, to a greater or less extent, of all the means and facilities of transportation and communication, such as canals, steamboats, turnpikes, street railways, telephones and telegraphs.

It is to the economic aspects of this subject, in connection with its relations to our government and our society, that your committee expect to devote their attention. The social, economic and

political significance of the means and facilities for transportation is destined to be even greater in the future than at present. The solution of the many vexing problems connected with the subject will be even more fundamentally connected with the solution of all our other social problems than it is to-day. It will surely, therefore, be increasingly worth our while to devote our best effort to the study of this topic.

We purpose, then, to investigate the social, economic and political aspects of the problems of transportation, taking account of the technical sides only so far as may be necessary to arrive at sound conclusions in regard to the former. Such questions as the following will command our attention : What is the effect upon our society, government, industry, of any given organization of our system of transportation ? What results flow from specific lines of policy, such as allowing railroad officials to determine the rates of fare and freight on any considerations which seem to them sufficient ? or from allowing anybody and everybody to build railways wherever and whenever he pleases ? What is the economic function of the canal in our modern system of transportation, and how can it be fulfilled ? What should be the relation of the government, whether federal, state or local, to the opening, construction, improvement or regulation of land and water ways of all sorts ; and to the organization, management, supervision and control of the business of transporting persons, news, or commodities ?

The following outline represents a provisional division of the field, which will show clearly enough

for our present purpose the general character of the proposed work :

I. The railway, in its economic, social and political relations.

II. The wagon road.

III. The canal.

IV. The telegraph and telephone.

V. The postal and express service.

VI. Local means of transportation and communication, such as street railways.

These topics are of course, all intimately connected with one another, and the division is not exhaustive. But it corresponds closely enough for our present purposes to the questions now before the American people which relate to the problems of transportation. Some of them are of much less importance than others, which will be recognized by the smaller amount of attention given to them, but they are all of sufficient significance to merit considerable investigation on the part of the members of our Association and others whom we may succeed in interesting in the matter.

As a specimen of the proposed work the committee would submit the following outline of an investigation now in progress for the Association by Professor Jenks, of Knox College, Galesburg, Illinois :

ROAD LEGISLATION FOR THE AMERICAN STATE.

Introduction—A brief discussion of economic significance of roads.

A. I. IMPORTANCE OF COUNTRY ROADS.

1. Amount of traffic.

2. Cost of traffic on common roads.

3. Cost of traffic on good roads.

II. RELATION OF ROADS TO THE RAILWAY.

1. As feeders to the railways.
2. As competitors of the railways.
3. Effect of character of roads on the net-work of railways.
4. The effect of the railroad on the road system.

B. III. ROAD LEGISLATION.

1. Roads systematized and classified.
 - a.* state; *b.* county; *c.* township.
2. Road Officers—Those adapted for the carrying out of such a system with details as to election or appointment, duties, etc.
3. Discussion of such a system.
 - a.* Advantages and disadvantages compared with present system as regards efficiency in making and repairing.
 - b.* Relative cost as compared with present.
 - c.* Political significance—centralization vs. decentralization.
 - d.* Practicability, etc., etc.
4. Revenue for road-purposes.
 - a.* State, county, town.
 - b.* Property-tax, poll-tax.
 - c.* Labor vs. cash system.

All of which is respectfully submitted.

Committee, { E. J. JAMES, *Chairman*.
 { RICHMOND M. SMITH.

Boston, Mass., May 23d, 1887.

P. S. Mr. Lyman Abbott, the third member of the Committee, was not present.

THE AGITATION
FOR THE
Federal Regulation of Railways.

By
EDMUND J. JAMES, Ph. D.,
Professor in the University of Pennsylvania.

FEDERAL REGULATION OF RAILWAYS.

The history of the railway, as perhaps that of no other economic institution of our national life, serves to illustrate the inevitable tendency of a strong government, if not to extend the actual sphere of its duties, at least to increase in importance by the growing importance of its functions. It may be a fair question of dispute whether our federal government, for example, had prior to 1860 really extended its functions, constitutionally speaking, since its foundation; but I take it there will be but little dissent from the opinion that it occupied then a much more prominent place in the mind of the average American citizen than it had done seventy years before, and that this prominence has been increasing ever since. So completely has the nation absorbed the political interest of the community that it is now recognized as one of the serious evils of our time that it is impossible to get our citizens to look at a local matter from a local standpoint instead of from a so-called national point of view. A man who is a republican in national affairs thinks he must favor and vote for a straight republican ticket in local matters.

Concentration of interest in our federal government and its doings is one of the most noteworthy phenomena of our political life. "It has been truly said," remarks Judge Cooley in his treatise on constitutional law, "that power when it has attained a

certain degree of independence and energy goes on to further degrees. But when below that degree the direct tendency is towards further degrees of relaxation until the abuses of liberty beget a sudden transition to an undue degree of power. The government of the United States was below the degree of self-protecting energy while the articles of confederation constituted the bond of union, but it attained at a bound to due energy and independence under the administration of Washington and Hamilton, while the judiciary was in accord with their views, and if the period of relaxation ever came, its influence upon the authority asserted for the government was not great and was only temporary. The principles that at one time applied the power over commerce to the regulation of navigation at a later day are found equally applicable to traffic and travel by railroad and communication by telegraph; and though these new applications of principle do not in the least depart from or enlarge former doctrines, they nevertheless strengthen greatly the national power by the immensity of the interests it is thus invited to take under its control. So the authority to purchase territory at one time is found equal to annexation of an independent state at another. This gradual energizing of federal authority has been accomplished quite as much by the course of public events as by the new amendments to the constitution; and however careful every federal official and every citizen may be to so perform all political functions as to preserve, under all circumstances, the constitutional balance of powers and to sanction no unconstitutional encroachments, there can be no question that the new interests, coming gradually within the purview of federal

legislation, and the increase in magnitude and importance of those already under federal control, must have a still further tendency in the direction indicated."

This tendency has been hastened, to a remarkable extent, as noted in the above quotation, by the course of our economic and constitutional development in regard to matters pertaining to regulation of commerce. Commerce was, of course, at the time of the establishment of the Union, of enormous importance to the welfare of the country, and the grant of the power to regulate commerce to the federal government was, even at that time, sufficient to relegate the states to a very subordinate position in the national life compared with what they would have assumed without that limitation. But, after all, the community was still in many respects in a primitive state. The individuals produced very largely in their own families and on their own farms what they wanted to consume. They were still largely independent of other producers for the essentials of life. The system of exchange was not yet of that fundamental importance which it afterwards attained. Moreover, the regulation of commerce did not probably mean, in the eyes of the men of that time, a regulation of the highways and the toll policy of the state. Many of the circumstances which nowadays are almost indissolubly united, as, for example, in the case of the railway, the construction and repair of the road-bed, regulating the tolls upon them and the carrying business itself, were at that time entirely distinct, and scarcely any of them were, in the thought of that period, regarded as matters for the federal government to act upon.

With every advance, however, in the development of our system of commerce, the whole matter became of more importance, and the view which regarded the nation as a whole in distinction from the state as having a stake in this matter become more general. More and more of the labor of the country was employed, not in producing the things which the laborers themselves expected to consume, but in making one kind of thing with the idea of selling it to somebody else and with the proceeds purchasing what they wanted to use. This, of course, meant that the system of transportation and commerce was becoming of more and more fundamental importance, and that the question of the commercial policy of the country was assuming a hitherto unheard of significance to the nation as a whole. It is probable that even if the railroad had not been invented and brought into such general use, we should still have experienced this gradual extension of the federal power in regard to commercial matters.

But the coming of the railway hastened this process enormously. It is true that the significance of this fact was not noted, or at least acted upon, in the early days of the railway system. It took a generation for this point to come prominently into notice. But it lay in the nature of the case, and sooner or later it was bound to come to the front. A system of transportation, under which the construction and ownership of the road-bed, the fixing of tolls and the actual carrying business of transportation should all be vested in one and the same body, was surely destined to bring about entirely new combinations in business which could not fail to call for a new system of regulation of commerce. The general intro-

duction of the railway and the peculiar economic conditions of the country, the lack of waterways and even of passable highways on the land, all combined to give to the railroad a practical monopoly of the whole business of transportation. The growing division of labor and the consequent extension of the system of exchange resulted in the fact that more and more of what was produced in the country was actually, at some time or other in its course, transported for a longer or shorter distance on the railroad. This was at least true of nearly everything that was brought to market and put in competition with the products of other markets.

In a word, then, the whole system of transportation of the country tended to become a monopoly, at the same time that more of the wealth of the country was transported and became subject to the charges of this monopoly system. It followed, as a matter of course, that a larger and larger proportion of the wealth of the country was transported from one state into or across another. This circumstance brought it into the category of interstate commerce, which, by the terms of the constitution, was placed under the control within certain limits of the federal legislative.¹

As long as the industrial system of the country was not preëminently an exchanging one, *i. e.*, as long as the wealth produced in one state was chiefly consumed in that state, the courts were rather conservative about limiting the power of the state to make regulations on the subject of commerce, and the early decisions, while giving extensive powers to Congress and limiting those of the states very much,

¹See Note I, p. 51.

still left a very liberal field for state action. With every increase, however, of the field of competitive production and long distance traffic the courts showed a tendency to decrease still further the power of the states for the benefit of federal power. A long array of decisions might be quoted in which the tendency is plain to sustain, as far as possible, the power of the states to make regulations of commerce under the exercise of the police power; while the late decisions show as marked a tendency to abridge this power within the narrowest limits consistent with constitutional law.¹

These various circumstances, then, the growing importance of the railway system, the changing character of our industry and the limitations of state power by the constitution, could not but result in making it necessary for the federal government to regulate the railway also in case there should ever be any need of regulation.

The agitation for federal regulation, therefore, was bound to appear just as soon as any evils appeared in our railway system of transportation which the states for any reasons could not remedy.

The evils in the railway system did not let us wait long for their appearance. But they were at first of so slight character, as compared with the enormous interests to be served by the rapid extension of the system, that those who pointed out possible evils were looked upon as Cassandrian prophets, and scarcely worth consideration. The states were eager to have railways, so eager, in fact, that they began to construct railways on their own account, or to grant large subsidies to those who would build them.

¹See Note II, p. 52.

When grave abuses showed themselves in this policy, instead of trying to remedy them by securing a better administration, they allowed their administration to grow worse, and threw up the attempt to construct or build railways on their own account. They then opened the doors to so-called competitive building and allowed any five or ten men to start in on the construction of a railway who could scrape together a few thousand dollars to start with. In order to compensate for the great risks which builders had to take under such circumstances, they allowed them all sorts of opportunity to enlist the speculative and gambling spirit in the community in their aid, offering thus the possibility at least of enormous fortunes to those who could successfully sell out the public and manipulate the stock market. They allowed towns and counties to make great subscriptions in aid of all sorts of absurd undertakings, but took no measures to prevent them from becoming the victims of a set of sharpers whose equals would be looked for in vain almost anywhere else in the world. They gave to these companies all powers to take land by the right of eminent domain, and fix their rates at pleasure. In a word, all sorts of inducements were held out to secure the building of railroads. It is not a matter of surprise, therefore, that evils and abuses soon showed themselves.

It soon appeared, for example, that it was possible for men to form a company for the building of a railway by paying in, say five per cent., of the nominal capital. They would form a construction company within the general company to whom would be left the job of building the road. In their capacity as directors of the original company, they would

issue to themselves, as directors of the construction company, bonds of the road at a high rate of interest, in payment of enormous charges of construction. After constructing the road they would borrow money with which to pay interest on the bonds and also dividends on the stock, so as to make the public believe that the road was a paying institution. They would then sell out the stock and bonds after they had by this means forced up the market value as high as they could, and retire after making enormous fortunes, leaving a bankrupt road in possession of the stockholders or bondholders. The cost of constructing the road would be swollen in this way to three or four times the actual cost. The obligations of the road, as represented by the stocks and bonds, would represent often four or five times what it would really have cost to construct the road with anything like a fair degree of honesty and economy in the enterprise. This enormous burden of debt would serve as an excuse for enormously high charges for freight and passenger traffic, and although the conditions of competition may at times have prevented them from actually collecting these charges, they levied them wherever they could, which was always the case on stretches of the road where no competition existed. And at any rate they always had an excuse for such charges as they could levy, in the fact that they were not making any more than the current rate of profit on their capital, including stock and bonds. And this, of course, was very often true of those who had bought stock of such roads when it had been thus artificially boomed for the purpose of selling out.

It was found again that the directors of the rail-

roads, even where they had been constructed with some reference to honesty and economy, had interests which were not necessarily the same as those of the rest of the corporation or of the public. For example, the directors were often interested in manufacturing or trading enterprises where it was necessary to resort to the railroads in the course of their business. By giving to themselves, as directors, special rates and privileges, it was possible to build up their own business at the expense of rivals, thereby practically depriving the public of free competition in the particular branches of industry on the one hand, and cheating their fellow-stockholders on the other hand, by lessening by so much the possibilities of income, and consequently the frequency or size of dividends.

It was, moreover, possible for the directors to form companies of all kinds for the purpose of supplying the parent company with supplies, or of doing certain kinds of business for it, and, in their capacity as directors of the parent companies, awarding to themselves as directors of the barnacle companies fat contracts of all sorts, which increased the expenses of the road, raised the charges of service, thus cheating the public on the one hand and the stockholders on the other.

It was also found that directors could grant special rates to men who brought business to the railroad on condition that the latter would pay them handsomely as individuals for using their power as directors or officials for their benefit.

This power of fixing the rates at pleasure led to all sorts of privileges to individuals, or families, or

communities, which, by the very fact of their existence, produced an artificial state of industry in which it was absolutely impossible for an enterpriser to estimate the probable profits of a business until he had come to terms with the managers of one or more railroads to give him some special tariff. This system led to all sorts of bargains, and put in the place of the skill or industry of the manager the grace of some railroad corporation as the deciding factor of industrial success or ruin. As examples of the deals within the railway itself, none were more common than for some of the directors of a railroad to build a branch railroad, and then, after stocking and bonding it heavily, sell it out to the parent road at a high valuation. Among the minor, though most common forms of this kind of illegitimate manipulating, should be mentioned that by which the directors of a road buy up real estate in a certain locality and then place a station there so as to enhance the value of their property; or where they charge more in the neighborhood of a large city for a fare to a near station where they do not own land than to a more distant one where they do own real estate which they are eager to sell.

It soon became evident also that the competition on which the community had counted with so much certainty as a means of regulating the railway system failed utterly to be a satisfactory means of securing the reformation of abuses and the lowering of the fares. In the first place, in the very nature of things, competition over most of the line was absolutely impossible since two lines could not be built parallel from every station to every other. It was, therefore, only a very few places where competition

had an opportunity to show itself.¹ Even in these few places the competition was not regular or persistent. Now and then a struggle would occur between competing lines, but it did not last long and was generally followed by a relapse into the old way of doing things. Either some sort of agreement was arrived at by which both companies agreed to divide traffic or earnings, or to maintain rates, or some other device was adopted to abolish competition and put combination in its place. Ultimately one road would be bought up by the other, and the semblance even of competition would disappear. At the very best, one of the roads would be forced into bankruptcy, and then by its cut-throat competition would force the other along the same road; reorganization would follow, and new stock and bonds would be issued in such a way that, after all, the traffic between the two points would have to pay interest on two capitals instead of one. The outcome would be an enormous loss of money, respectively capital, not merely to the men who had put their money into the concern, but to the country as a whole.² It happened at times, indeed, that a road was built merely for the purpose of making some other competing road buy it out, which was nearly sure to be done in the long run.

¹“On the first day of January, 1887, there were, according to the Chief of the Bureau of Statistics, 33,694 railroad stations in the United States, of which 2,778 were junction points, *i. e.*, are points where there are more than one railroad, leaving 30,916 stations where there is but one railroad.”—*Speech of Senator Cullom, Jan. 17, 1887.*

When we consider that many of these junction points were on roads not having even a terminus in common, it is evident that the field of competition is relatively small.

²See Note III, p. 56.

Many other abuses were developed which I cannot stop here to describe. Suffice it to say that, taken as a whole, they became unbearable. Arbitrary charges, high charges, discriminations between persons, things, places, disregard of the rights of the public in every direction, became characteristic of the management of such a large number of the roads as to make railroad fairness a mere byword. A general demand made itself heard for some sort of regulation. But by this time the railroads had become so powerful that they were able, in some states, practically to control any legislature that could be elected in such a way as to prevent any action unfavorable to their interests, no matter how much their own action was unfavorable to those of the public. In other states commissions of various sorts were appointed to supervise the execution of railroad laws which the legislatures placed on the statute books. In some of the states laws were passed which were evidently dictated by simple hatred of the railways and were calculated to injure the public interest rather than redress grievances. It was also soon found, as noted above, that an attempt on the part of a single state to make regulations in regard to railways engaged in interstate traffic was unconstitutional and could not be enforced, except those few rules which might be subsumed under the police power, and the courts were tending to limit these as much as possible. Any attempt to regulate the rates of fare or freight on the railways were met by the threat that capital would not be invested in a state which attempted to interfere with its possible profits while there were other states which did not lay such burdens upon it. In some states where it would

have been possible to regulate the rates within certain limits, as on the great Pennsylvania Railroad, it was said, if you should do this it would simply lead to throwing this traffic into the hands of the New York Central, on the one hand, or the Baltimore and Ohio on the other. It was, moreover, very plain that in some states, a policy which the people would have been very glad to see applied within certain limits would not please them when universally adopted. Thus in such a state as Kansas while a certain kind of regulation as to long or short haul might suit them very well within the limits of the state for state traffic, it would not suit them so well if applied to produce which they have to send out of the state to other places. And so from one cause in one place, from another in another, and from both in a third, it soon became evident to all those who saw in the principle of competition no hope of a regulation of the railroad system (such as is imperatively demanded by all the interests of our industrial organization) that the only prospect lay in federal interference and regulation. In the federal government is to be found the adequate constitutional power; there only the opportunity to disregard the local elements whose contest made state supervision impossible. And accordingly we find, beginning about twenty years ago, a movement in favor of some sort of action on the part of the federal government, which, after it was fairly before the public, never ceased to advance until in the last Congress a law was passed which finally marked an epoch in the relation of the federal government to our railway system.

It will not be possible for us on this occasion to follow in detail the course of this movement from

its beginning until the present. I shall, therefore, content myself with a brief reference to the first report on the general subject which was made to Congress, and with a short presentation of the substance of the two most important of the following reports: The so-called Windom Report of 1873, and that of the Select Committee of the Senate, known generally as the Cullom Report of 1886.

Even before the close of the war there was a growing tendency manifest to look toward the federal government for some relief for certain of the evils which had shown themselves in the transportation system of the country. During the second session of the Fortieth Congress, in the year 1868, several resolutions were presented in Congress looking toward taking some action in the premises. On the 7th of January, 1868, Mr. Davis moved in the Senate that the committee on commerce be instructed to inquire into the expediency of regulating the various railroads in the United States that extend into two or more states as to rates of fare, freight, etc., etc. In the House, Mr. Loughbridge, on the 3d of March, offered a resolution instructing the committee on judiciary to inquire into the power of Congress to regulate the rate to be charged for freights by railroads engaged in commerce between different states of the Union. On April 27th, in the same House, Mr. Orth moved that the committee on roads and canals be instructed to inquire whether Congress has the power to provide for the regulation of railroads extending through several states so as to secure:

1. Safety of passengers.
2. Uniform and equitable rates of fare.

3. Uniform and equitable charges for freight or transportation of property.

4. Proper connection with other roads as to transportation of passengers and freight, and if, in the opinion of the committee, Congress possesses such power to report a bill which will secure foregoing objects.

A report was actually presented to this House on June 9, 1868.

The report is noteworthy for the strong ground it took in favor of the widest interpretation of the powers of Congress in the matter of the regulation of the railway traffic. Indeed, the whole report was devoted to an argument on the question whether Congress had this power under the constitution, only the last paragraph containing anything about the expediency of Congress taking any steps in the direction of exercising this power. The report of the majority, which only embraced some seven and one-half pages, was a masterly presentation of the view that the federal government had the broadest power in the premises, and insisting that it would surely, in the course of time, be obliged to exercise the power. Their answer, in brief, to the questions which they were instructed to investigate, was that Congress had full power to provide for the safety of passengers, for uniform and equitable rates of fare, for uniform and equitable rates of freight, and for proper connections with other railroads in regard to all railways engaged in interstate traffic, but that they were not ready to offer any bill to secure these objects, because they had not the necessary information to enable them to make intelligent recommendations. They proposed, however, that a com-

mission should be appointed, whose duty it should be to collect this information. Congress did not act, however, on the suggestion of the committee.

The matter was not destined, however, to rest here. Memorials began to pour in upon Congress from every direction, praying for relief from various specified evils, which, in the opinion of the petitioners, could not be remedied by any other agency. The crisis of 1873 and the resulting Granger agitation quickened enormously the public interest in the topic, and the really wide-spread agitation dates from 1874.

The President, in his message of December, 1872, invited the "attention of Congress to the fact that it will be called upon at its present session to consider various enterprises for the more certain and cheaper transportation of the constantly increasing Western and Southern products to the Atlantic seaboard," said that the subject is one which will force itself upon the legislative branch of the government sooner or later, and suggested therefore that immediate steps be taken to gain all available information to insure equitable and just legislation, and recommended the appointment of a committee to take up the whole matter and report to Congress for its better guidance in legislating on this important subject. Following out this suggestion the Senate appointed a committee of seven, to whom that part of the President's message was referred on the 16th of December. On the 26th day of March following leave was given this committee to sit during the recess of the Senate.

The problem, as it lay in the mind of the President and the Senate, was rather the question of

cheaper transportation than the abuses in regard to other matters which had revealed themselves in the management of the railways. And although the committee kept this point ever in mind, they investigated at the same time all phases of the railroad problem which came before them. The report is interesting, as it contains for the first time a comprehensive plan of regulation of the whole subject of commerce between the states, as it has constituted itself since the introduction of the railway. Its intrinsic and historical importance will justify a somewhat extended notice.

The summary of conclusions and recommendations presents in a nut shell the results of their work, and shows the direction in which public thought was at that time tending.

The summary begins by asserting the importance of the problem of cheap and ample facilities for the transportation of commodities between all parts of the country, claims for Congress ample power under the constitution to regulate inter-state commerce in every respect, even to the extent of constructing and operating railroads and canals on its own responsibility, allows that a remedy for some of the abuses existing may be found in a plan of regulation and supervision, but rejects this plan as impracticable in the present state of our knowledge of the transportation system of the country, at least as a means of securing the desired ends in railroad regulation. The object which they emphasize as the chief one is cheap transportation.

They then proceed to recommend certain measures as likely, in their opinion, to help in the attainment

of the end in view. The most important of these were the following—

1. Absolute publicity of all rates, so that every shipper might know exactly what terms every other shipper obtained, and a prohibition of any increase of such rates without reasonable notice to the public.

2. The absolute prohibition of the combination or consolidation of competing lines.

3. That all railway companies engaged in transporting grain be compelled to receipt for quantity and deliver the same at destination.

4. That all railway companies and freight organizations receiving freight in one state to be delivered in another, and whose lines touch at any river or lake port, be prohibited from charging more to or from such port than for any greater distance on the same line.

5. The prohibition of stock watering, though this matter must be left to the individual states, since it does not fall within the power of Congress.

6. The absolute prohibition of the officers of railway companies from being directly or indirectly interested in any non-coöperative freight line operated on their road.

7. The establishment of a bureau of commerce whose duty it should be to collect information on the whole topic of domestic transportation and to supervise the execution of such federal laws as Congress should pass. It should be empowered to require from every company engaged in interstate commerce full statements as to the following points: (a) The tariff for passengers and freight, together with all special rates, drawbacks, deductions and discriminations. (b) Receipts and expenditures, including compensation paid all employes and officers or agents of the company. (c) The amount of stock and bonds issued, the price at which they were sold, and the disposition made of the proceeds. (d) The amount, direction and kind of traffic.

The committee were however of the opinion, that even after all these recommendations should be carried out, yet the problem of cheap transportation would not be solved by any or all of these measures. To ensure the latter object they were of the opinion that free competition was absolutely necessary. Under ordinary conditions of the railroad business such competition is impossible, since in some form or other

practical combination was sure to result, no matter what restrictions might be imposed by law. The only way to insure this competition lay in the opening up of several lines of water ways under the control of the federal government, the use of which should be to open to everybody on the same terms. To supplement these and complete the ensurance of free competition it is also necessary that the federal government should construct one or more trunk lines between the West and the East, which should be operated in the same manner essentially as the canals, for the purpose of regulating rates, etc., by competition from a line which could not enter into combinations of any sort with existing lines.

It is interesting to note that this committee still believed in competition as a satisfactory means of regulating railroad transportation. They admitted, it is true, that competition among lines which were free to make their own engagements was not and never would be effective, but they still thought that competition between lines, which, by the very nature of the case, could not combine, would bring about the desired results. It is also significant that the committee saw in the development of a line of water ways an indispensable condition of any great improvement in the cheapness of transportation.

Nothing came of these recommendations, but the report served to direct public attention still more powerfully to the importance of the question in general and the imperative necessity of the federal government taking some measures in relation to the matter. The great change in the railroad conditions of the country after 1873, the rapid fall in the rates of transportation over large portions of our railway

system, the enormous extension of the railways themselves by which the benefit of such competition as is possible in such business accrued to more and more of the important centers of the country, the returning prosperity of the country beginning with 1878 and 1879, all served to turn the attention of the country away from the question of cheapness as the most important issue involved to the subject of discriminations between sections, cities and individuals. When the agitation again became vigorous, viz., in the years since 1880, this phase of the subject attracted most attention. In view of the fact that our rates for through traffic had fallen below the rates prevailing for railroad transportation in other parts of the world, it was difficult to concentrate public attention on the matter of cheapness, although it is by no means certain when we consider the greater cheapness of our railway construction, the enormous subsidies granted in aid of the railways, and the high rates for local traffic, that we do not pay as high rates proportionally as any of the European countries.¹

We find, for example, in the next congressional report, which attracted much attention, viz., the Cullom committee report of January 18, 1886, the statement that the existing railroad policy of the United States "has given us the most efficient railway service and the lowest rates known in the world;" but, it continues, "its recognized benefits have been attained at the cost of the most unwarranted discriminations, and its effect has been to build up the strong at the expense of the weak, to give the large dealer an advantage over the small trader, to make capital

¹See Note IV, p. 57.

count for more than individual credit and enterprise, to concentrate business at great commercial centres, to necessitate combinations and aggregations of capital, to foster monopoly, to encourage the growth and extend the influence of corporate power, and to throw the control of the commerce of the country more and more into the hands of the few."

This quotation sums up, in a brief way, the result of the development of our railway system in the years which elapsed between 1872 and 1886, and also the course and drift of public sentiment on the subject during the same period. Beginning with about 1878, bill after bill was introduced into Congress looking toward some active interference on the part of the federal government in the matter of interstate commerce. There were, in general, two plans of such regulation proposed. According to the one plan, Congress was asked to pass a railroad law containing a number of provisions intended to do away with the discriminations between individuals and places, secure publicity, etc., etc., and then leave the private shipper to fight it out with the corporations in the ordinary courts of law. The other proposed a law containing similar provisions, but providing for the establishment of a commission, whose business it should be to supervise the execution of the law, listen to complaints of shippers, investigate charges against the railroads, etc.

It is probable that some law would have been accepted long before the existing law was passed, if it had not been for the almost irreconcilable difference of opinion among the favorers of federal regulation as to the matter of the commission and its authority. The two provisions of the law which

gave rise to most difference of opinion among the promoters of legislation, were the so-called long and short haul clause, and that prohibiting pools.

After several long discussions of the subject in Congress, the Senate authorized its President to appoint a select committee of that body to investigate the subject. This committee was appointed March 21, 1885, and made its report as noted above, January 18, 1886.

We must be satisfied with a brief examination of it in this connection. They begin with a short introduction, emphasizing the importance of the topic. They next examine the power of Congress to regulate commerce. This is followed by an examination into the economic and social functions of the railway. A review is next given of the various systems of state regulation adopted in the different countries. The subject of competition by water ways is then discussed. The necessity of national regulation of interstate commerce is then emphasized. This is followed by an examination of the abuses to be abated, the methods of doing it, and the report is closed with the recommendation that the bill be passed which the committee submitted with its report.

Certain points are worth mentioning. This committee agreed most emphatically with the committee of fourteen years before in regard to the influence of water routes on railway charges. They give it as their conclusion that natural or artificial channels of communication by water, when favorably located, adequately improved, and properly maintained, afford the cheapest method of long distance traffic now known, and that they must continue to exercise in

the future, as they have invariably exercised in the past, an absolutely controlling and beneficially regulating influence upon the charges made upon any and all other means of transit. In another place they say: "The cheapest mode of transportation is by water. The railroads have accomplished wonders, but no railroad can successfully compete with a free and unobstructed water route, so far as the cost of carriage is concerned. Therefore, to secure the blessings of cheap transportation, and to hold our place among the nations of the earth, we must develop our natural waterways to their fullest capacity and give the benefits of lake, river and canal communication to the people of all the states as far as practicable." They add an emphatic recommendation that the federal government take up in earnest this branch of internal improvements.¹

The report states in a clear way the abuses which have grown up under our present system, pointing out how such abuses were bound to arise under any such system, and how there is no tendency to get rid of them, but rather to intensify them as time goes on. The only way to remedy them is by state regulation. The states of the Union are precluded, by the federal constitution, from any effective regulation. It devolves, therefore, upon the federal government to do this work. The most important step at present is one securing absolute publicity in the rates of fare and freight of all railroads, and forbidding discriminations between places, persons and traffic. To do this, it is necessary to provide some better means of protecting acknowledged rights than is now available. This can be done by the

¹See Note V, page 61.

establishment of a commission charged with superintending the execution of the law.

As a result of the report of this commission, and other influences, a law was passed as a compromise measure, which is known as the Interstate Commerce Law.¹

It is worth while to note the indictment which the Cullom committee bring against the present railroad management of the United States. The substantial truth of every count is generally admitted by railroad managers themselves.

THE CAUSES OF COMPLAINT AGAINST THE RAILROAD SYSTEM.

The complaints against the railroad system of the United States expressed to the committee are based upon the following charges :

1. That local rates are unreasonably high, compared with through rates.

2. That both local and through rates are unreasonably high at non-competing points, either from the absence of competition or in consequence of pooling agreements that restrict its operation.

3. That rates are established without apparent regard to the actual cost of the service performed, and are based largely on "what the traffic will bear."

4. That unjustifiable discriminations are constantly made between individuals in the rates charged for like services under similar circumstances.

5. That improper discriminations are made between articles of freight and branches of business of a like character, and between different quantities of the same class of freight.

6. That unreasonable discriminations are made between localities similarly situated.

7. That the effect of the prevailing policy of railroad management is, by an elaborate system of secret special rates, rebates, drawbacks and concessions, to foster monopoly, to enrich favored shippers,

¹See Note VI, page 64.

and to prevent free competition in many lines of trade in which the item of transportation is an important factor.

8. That such favoritism and secrecy introduce an element of uncertainty into legitimate business that greatly retards the development of our industries and commerce.

9. That the secret cutting of rates and the sudden fluctuations that constantly take place are demoralizing to all business except that of a purely speculative character, and frequently occasion great injustice and heavy losses.

10. That, in the absence of national and uniform legislation, the railroads are able by various devices to avoid their responsibility as carriers, especially on shipments over more than one road, or from one state to another, and that shippers find great difficulty in recovering damages for the loss of property or for injury thereto.

11. That railroads refuse to be bound by their own contracts, and arbitrarily collect large sums in the shape of overcharges in addition to the rates agreed upon at the time of shipment.

12. That railroads often refuse to recognize or be responsible for the acts of dishonest agents acting under their authority.

13. That the common law fails to afford a remedy for such grievances, and that in cases of dispute the shipper is compelled to submit to the decision of the railroad manager or pool commissioner, or run the risk of incurring further losses by greater discriminations.

14. That the differences in the classifications in use in various parts of the country, and sometimes for shipments over the same roads in different directions, are a fruitful source of misunderstandings, and are often made a means of extortion.

15. That a privileged class is created by the granting of passes, and that the cost of the passenger service is largely increased by the extent of this abuse.

16. That the capitalization and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued.

17. That railroad corporations have improperly engaged in lines of business entirely distinct from that of transportation, and that undue advantages have been afforded to business enterprises in which railroad officials were interested.

18. That the management of the railroad business is extravagant and wasteful, and that a needless tax is imposed upon the shipping and travelling public by the unnecessary expenditure of large sums in the maintenance of a costly force of agents engaged in a reckless strife for competitive business.

Many of these charges, even where they relate to serious evils and are undoubtedly true, involve, of course, no moral turpitude on the part of railroad authorities, as many people seem to think. Railroad officials are much like other men, and act very much as other men would act under like circumstances. When we allow, for example, a set of men to construct a road for the mere purpose of bleeding another, we may expect the management of the latter to take such measures for its own preservation as it may be able, no matter what may be their effect on the interest of the railroad on the one hand, or of the public on the other. Where we subject a management to great risks, and offer large prizes for success, we may expect to find all the ordinary phenomena attending other forms of gambling to show themselves. Where we allow companies to be so organized that the managers may make enormous fortunes by selling out the interests of their own stockholders, and then offer them every facility for so doing, such as allowing them to keep secret their own transactions and that of the company, and permitting them the widest discretion in their dealings with individuals and communities, we should not be surprised when enormous fortunes are realized, though the dividends on stock cease, and the interest on bonds is stopped.

When, in short, we offer every inducement in the world for men to do things which they are naturally inclined to do, it should cause no wonder that they accept the inducement. The evils of our present railroad management are, in other words, to a large extent, the result of carelessness, shortsightedness and selfishness of the American people, and particularly of its representatives, and they will not disap-

pear until the opposite of these qualities are exercised by our legislators.

Some of the evils are, perhaps, inherent in the nature of the case. They can not be eradicated altogether, except by eradicating the railway itself. It is not a case of choice between evils and no evils, but between these special evils and some others. Even this, however, is worth our attention, since there may be a great difference between one evil and another, and it may result even more to our advantage to choose the less of two great evils than to abolish some other and smaller evil altogether.

The discussion which occurred on the passage of the Cullom bill is noteworthy in several respects. It is significant that there was no consensus of opinion whatever as to what the various provisions of the bill meant, or what they were intended to mean. This fact serves to illustrate how futile it is for the courts in deciding the meaning of a law to attempt to go back of the wording and try to ascertain the reasons which controlled the legislature in passing the law. It is, moreover, interesting to note the overwhelming vote in favor of the bill, having passed the Senate by a vote of forty-three to fifteen, and the House by a vote of one hundred and ninety-one to thirty-two. The anxiety of certain congressmen to be on both sides of the question is well illustrated by a suggestion made by a distinguished member of the House from Pennsylvania, just before the final vote was put. Said he: "The speaker evidently sees the embarrassment of many members who purpose to vote for this bill, but who do not approve of its measures (of which he was one). Is there not some practical way by which those gentlemen can free

themselves from that embarrassment?" It was just this class of gentlemen who for ten years had prevented any legislation whatever, by doing everything they could to delay action, and who did the very best they could on this occasion to do the same thing.

The attention which public men give to the study of great questions is well illustrated by the remarks of a distinguished member from New England who opposed considering the subject quite so soon as those who were urging it insisted upon. He plead for at least two weeks delay, "since," to use his own words, "it is a bill containing a new scheme in part which demands not only profound study on the part of the legislators who are to vote upon it, but also demands that the business interests of the country should have an opportunity to see it." And this, too, after the subject had been before Congress for fifteen years and in the shape of a bill for nearly ten years. This distinguished gentleman had been in public life the whole of that time, and nearly as long again. And yet he needed only two weeks to give it the profound study which it demanded.

In the very last week of its passage the plea was made that opportunity should be allowed for its discussion and investigation, on the ground that time enough had not been allowed, though scarcely a week had passed in the twenty years preceding during which it had not been urged upon the attention of Congress by a memorial or speech or report, or something of the sort. I suppose if the question had been discussed for twenty years longer the same argument would have been heard.

It is interesting to note that the argument against the power of Congress to pass and enforce such a

law on constitutional grounds was scarcely heard during this last discussion. Senator Stanford, of California, Mr. Evarts, of New York, and Mr. Morgan, of Alabama, were almost the only ones who took bold ground against the power of Congress to take any measures of the sort.¹

The bill is not by any means an ideal one. It would not be possible to pass an ideal bill on such a subject through Congress, if by an ideal bill is meant a perfectly wise one; for to do that we have not the necessary information, and never can obtain it except under the experience obtained by the action of some such a bill as this; or if we mean by ideal what seems to any one man or group of men to be ideal, it would be equally impossible to obtain such a bill, since any such measure where so many conflucting interests are at work can not be passed except as a compromise measure. The bill has moreover really settled nothing, except that the federal government has finally taken the first step in the direction of solving our transportation problems, in that it has begun the work of experimentation in this field. It is impossible to tell exactly what is going to be the outcome of any proposed legislation or proposed policy, owing to the vast and complex relations involved; but it is also impossible ever to find out what can or can not be done except by an attempt to do something or other. In many cases the most important thing is to go ahead, whether you know you are right or not; simply because by not going ahead you are sure to be lost. This is one of them. Those whose interests or views of government functions lead them to believe that only harm can come

¹See Note VII, p. 66.

from attempts to do this sort of thing, are bound, of course, to oppose them. Those who believe that something must be done, but who do not yet see their way clear as to what should be done, should be willing to join with those who have settled views and give them a fair chance to prove that they are right or wrong, and not stand back and incur the sure evils which are now upon us and increasing, for fear that some unknown and undefined evil may overtake them sometime in the future as a result of such measures.

I am among those who hail this bill with great satisfaction as the absolutely essential step to something better, and I believe that the next Congress will be ready to make some changes as a result of our short experience under it. Above all, I feel that we should congratulate ourselves on the fact that the subject of railroad transportation is now in a fair way to receive that close and long-continued attention which its importance deserves, and that from this time on we shall see an increasing number of practical railroad men, and of theoretical students, devoting their attention to this problem. It is rather a remarkable fact that in spite of the very great importance and significance of the railway, it is only within the last five years, with a single exception, that we have possessed in English any work on the social and economic aspects of the railway problem. Railroad men are right in saying that there is, at present, no such thing as a science of transportation, which is anything else but an answer to the question, "How can I, as a railway manager, get the most out of my railway under existing conditions of competition, regardless of the rights of any one else?"

The questions of technical interest to railway men will now gradually assume a more prominent place in the public mind than they have ever had before. The question of railway tariffs, for example, is not yet fairly before the public, but this interstate bill will bring it before us in a very direct and forcible way. When the problem is once fairly stated, we may be sure that a long stride has been taken towards its solution. Our railroad questions have so far been considered as almost exclusively private questions—of interest only to the shipper on the one hand, and the railway manager on the other. It will now be possible and necessary more and more to consider the question, from the public point of view, as to its effects upon the distribution of wealth and population in the country at large, and it is only from this point of view that we can ever hope to arrive at any fundamental principles upon which there will be any general consensus of opinion.

We shall be, I believe, in a much more favorable position to solve some of the most vexatious questions of the problem than any other government which is now busying itself with it. We are coming more and more to regard the railroads of the country as one system. I believe that one effect of the present bill, if it is allowed to exist long enough, will be to bring more and more of the roads of the country under one management; in a word, to hasten combination, and with increasing combination will come increased ease of control. With a longer experience will come a clearer insight into the underlying principles of the business and a more reasonable policy in every respect.

And if the future should show that this particular

bill was not a wise one, that it did not cure evils, or even that it created new ones, we can, I am sure, console ourselves with the idea that through this was the only way to attain to a juster view, just as a man who has arrived at a sure resting place after struggling through a swamp, and sees that after all there was a better way, may console himself with the thought, that the most important question, after all, was not which way was the best, since it was impossible to decide that from his former position, but that he should quickly adopt some way and follow it up to a point where a favorable view would enable him to look back over the whole ground, and also to look forward to the road which stretches out before him, and by the aid of the experience behind him, find a new and better way for his future course.

NOTES.

I.

The enormous rate at which railroad traffic has increased may be seen from the following table, taken from Nimmo's Report on Internal Commerce of the United States, for 1884 :

Total number of tons (of 2,000 pounds) transported upon the New York state canals, the New York Central and Hudson River Railroad, the New York, Lake Erie and Western Railroad, and the Pennsylvania Railroad, each year from 1868 to 1883, inclusive.

YEAR.	New York State canals.*	New York Central and Hudson River Railroad.*	New York, Lake Erie and Western Railroad.*	Pennsylvania Railroad Division.†
	TONS.	TONS.	TONS.	TONS.
1868.....	6,442,225	1,846,599	3,908,243	4,722,015
1869.....	5,859,080	2,281,885	4,312,209	5,402,991
1870.....	6,173,769	4,122,000	4,852,505	5,804,051
1871.....	6,467,888	4,532,056	4,844,208	7,100,294
1872.....	6,673,370	4,393,965	5,564,274	8,459,535
1873.....	6,364,782	5,522,724	6,312,702	9,211,231
1874.....	5,804,588	6,114,678	6,364,276	8,626,946
1875.....	4,859,858	6,001,954	6,239,946	9,115,368
1876.....	4,172,129	6,803,680	5,972,818	9,922,911
1877.....	4,955,963	6,351,356	6,182,451	9,738,295
1878.....	5,171,320	7,695,413	6,150,568	10,946,752
1879.....	5,362,372	9,015,753	8,212,641	13,684,041
1880.....	6,457,656	10,533,038	8,715,892	15,364,788
1881.....	5,179,192	11,591,379	11,086,823	18,229,365
1882.....	5,467,423	11,330,393	11,895,238	20,360,399
1883.....	5,664,056	10,892,440	13,610,623	21,674,160

*From annual report of Auditor of Canal Department, State of New York.

†From annual reports of Pennsylvania Railroad Company.

From this table it appears that the tonnage transported on the New York Central and Hudson River Railroad increased from 1,846,599 tons in 1868 to 10,892,440 tons in 1883 ; that the tonnage transported on the New York, Lake Erie and Western Railroad increased from 3,908,243 tons in 1868 to 13,610,623 tons in 1883 ; and that the tonnage trans-

ported on the Pennsylvania Railroad increased from 4,722,015 tons in 1868 to 21,674,160 tons in 1883. The total tonnage transported by rail on these three roads increased from 10,476,857 tons in 1868 to 46,177,223 tons in 1883.

The growing importance of the railway as compared with the canal under our present system is very evident from the above table. Much of this traffic was "through traffic," *i. e.*, traffic which went from the West to the East, while a much larger proportion of it was interstate traffic, *i. e.*, traffic which crossed at least one state line. It appears, from the reports of New York state officials, that the traffic on the Erie canal increased from 4,729,654 tons in 1865 to 5,009,488 in 1884; while the traffic on the railroads competing with it ran in the same time from 3,609,640 to 22,123,895 tons.

II.

Chicago, Burlington and Quincy R. R. vs. Iowa.—*Otto VI*, p. 155 *U. S. R.* 94.

As to the constitutionality of the law of Iowa, establishing reasonable maximum rates of charges for the transportation of freight and passengers on the different roads of the state.

"The objection," says the court, Waite, C. J., "that the statute complained of is void, because it amounts to a regulation of commerce among the states, has been sufficiently considered in the case of *Munn vs. Illinois*. This road, like the warehouse in that case, is situated within the limits of a single state. Its business is carried on there, and its regulation is a matter of domestic concern. *It is employed in state as well as interstate commerce, and until Congress acts the state must be permitted to adopt such rules and regulations as may be necessary for the promotion of the general welfare of the people within its own jurisdiction, even though in so doing those without may be indirectly affected.*"

The portion of the decision in *Munn vs. Illinois*, to which the court referred in the above quotation, is as follows :

The warehouses of these plaintiffs in error are situated, and their business carried on exclusively, within the limits of the state of Illinois. They are used as instruments by those engaged in state as well as interstate commerce, but they are no more necessarily a part of commerce itself than the dray or cart by which but for them grain would be transferred from one station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. *Their regulation is a thing of domestic concern, and certainly until Congress acts in reference to their interstate relations, the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction.* We do not say that a case may not arise in which it will be found that a state under the form of regulating its own affairs has encroached upon the exclusive domain of Congress in respect to interstate commerce, but we do say that upon the facts as they are represented to us in his record, that has not been done."

Still more advanced ground was taken in the case of *Peik vs. Chicago and Northwestern Railway Company*, at the same term of court. In this it was held that the Legislature of Wisconsin had power to prescribe a maximum of charges to be made by said company *for transporting persons or property within the state, or taken up outside the state and brought within it, or taken up inside and carried without.*

"The law," said the court, "is confined to state commerce or such interstate commerce as directly affects the people of Wisconsin. Until Congress act in reference to the relations of this company to interstate commerce, it is certainly within the power of Wisconsin to regulate its fares, etc., so far as they are of domestic concern. With the people of Wisconsin this company has domestic relations. Incidentally these may reach beyond the state. *But certainly until Congress undertakes to legislate for those who are without the state, Wisconsin may provide for those within, even though it may indirectly affect those without.*"

This decision marked the further limit of liberality in construing state power in matters pertaining to

railroad regulation. The economic conditions referred to above prevented the state from exercising this power to any great extent, and it was not long before an entirely different decision changed the whole face of affairs, as will be seen from the following quotations from a speech by Mr. Beck, of Kentucky in the Senate, January 11, 1887 :

“The Supreme Court has conclusively settled the question that Congress, and Congress alone, can protect the people against extortions of that character, and that the states are powerless.

“It has done so in the most emphatic manner within the last four months in a case about which there was no dispute as to the facts, and no difference of opinion as to the wrong inflicted, or as to the propriety of punishing the railroad company as a wrongdoer. I refer to the case of the Wabash, Saint Louis and Pacific Railway Company vs. The State of Illinois, decided by the Supreme Court at the October term, 1886, in which Mr. Justice Miller delivered the opinion of the court, and Mr. Justice Bradley the dissenting opinion. The record presents the whole question so fully and fairly that I need only quote briefly the facts and conclusions of law as shown by it. It shows that—

“The Wabash, Saint Louis and Pacific Railway Company, an Illinois corporation, plaintiff in error, was sued by the State of Illinois to recover a penalty for the breach of its laws, passed to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freight on railroads in the state.

“The law sued on was originally passed in 1871, and revised in 1873.

“The declaration alleged, in substance, that the company charged certain parties fifteen cents per one hundred pounds for carrying a load of freight from Peoria, in the State of Illinois, New to York, one hundred and nine miles of the distance being in Illinois, whilst at the same time it charged certain other parties twenty-five cents per one hundred pounds for carrying a like load of the same class of freight from Gilman, also in the State of Illinois, to New York, twenty-three miles of the distance being in Illinois, both places being on the line of the road. This allegation was substantially admitted, and judgment was finally rendered in favor of the state, and was sustained by the supreme court of the state, to which the present writ of error was directed.

"The main point insisted on by the railway company in its defense was, that the law on which the action was founded is unconstitutional, in its application to their case, as being a regulation of interstate commerce.

"Among other things the railroad company asked for the following instruction:

"The court further holds as a matter of law that the transportation in question falls within the proper description of "commerce among the states," and as such can only be regulated by the Congress of the United States under the terms of the third clause of section 8 of article 1 of the Constitution of the United States.

"All of these propositions were denied by the court, and judgment rendered against the defendant, which judgment was affirmed by the Supreme Court on appeal.

"Mr. Justice Miller, speaking for the Supreme Court of the United States, after a full citation of authorities closes thus:

" 'Of the justice or propriety of the principle which lies at the foundation of the Illinois statute, it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the state, it may be very just and equitable, and it certainly is the province of the State Legislature to determine that question. But when it is attempted to apply to transportation through an entire series of states a principle of this kind, and each one of the states shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the states and upon the transit of goods through those states, can not be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and can not be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois court concedes it to be, it must be of that national character; and the regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution. The judgment of the Supreme Court of Illinois is therefore reversed, and the case remanded to that court for further proceedings in conformity with this opinion.'

"The state courts are rapidly conforming their action to this decision, and are surrendering all the jurisdiction they had attempted to assume in this class of cases, so that Congress must act, or by its

refusal declare that the railroads are beyond the reach of law. I find the following among the late dispatches :

“A QUESTION OF INTERSTATE COMMERCE DECIDED BY THE BOSTON COURTS.

“Boston, January 8.

“The full court has given an important decision in the case of the Commonwealth vs. Housatonic Railroad Company, which involves a question of interstate commerce. On July 25, 1885, the Massachusetts railroad commissioners, acting under the statute of 1885, chapter 338, passed an order fixing the maximum rate which the Housatonic road might charge for transporting certain kinds of freight between points in Massachusetts and Connecticut. The plaintiff alleged that the defendant company had unlawfully violated this order by charging a higher rate than the commissioners allow.

“The defendant contended that section 2 of the statute named under which the order was made is invalid, because in conflict with the constitution of the United States, Article I, which gives Congress the exclusive right to regulate interstate commerce. The court sustains the defendant, citing the recent decision of the United States Supreme Court in the Wabash, Saint Louis and Pacific Railroad Company vs. The People of Illinois, in which a statute against unjust discrimination was involved. The decision is written by Chief Justice Morton, and of course invalidates the order of the railroad commissioner.

“It will be observed that in the Wabash case there was no dispute as to the act of the railway company being wrongful, as an unjust discrimination in favor of one citizen against another; it was conceded that the offending corporation ought to be punished. The court, after full hearing, decided that the duty of protecting the people against that and other wrongs of like character devolved upon Congress, because it was beyond the jurisdiction or control of any state. So that, if we fail to provide means of redress, the people of all the states are without remedy against the discriminations, extortions, and combinations of the railroad companies engaged in the interstate or foreign carrying trade. The laws of Illinois could and would have punished the Wabash Company for its unjust discrimination in this case, but the state courts were powerless, because Congress alone has the constitutional authority to do so.”

III.

It is quite a common answer to the objection that capital is wasted under our present system of rail-

road management, that if private individuals choose to invest their capital in wild-cat undertakings, it is nobody's business. This, of course, ignores entirely the important and ever growing interest which society, as a whole, has at stake in the methods of investing capital which may prevail at any given time. If a hundred million of dollars be spent in constructing a useless railroad, it means not only that private individuals have squandered that amount of money, but also, that an equivalent amount has been withdrawn from productive investments, from fields where its use would have returned a large increase to the total wealth of society. It means a permanent reduction by that amount of the possible wages fund of the country, and consequent idleness on the part of laborers who might otherwise have been employed in productive operations. We recognize the right of society to determine the direction of capital investment when we restrict the opportunities for drinking spirituous liquors or purchasing lottery tickets or opening bucket shops, etc. It is probable that capital enough has been wasted in what may be fairly enough called gambling operations, in connection with our American railways, to construct half the total railways in the country.

IV.

It is a very common statement that our railroad system is far ahead of any other one in the world. Senator Hoar said in a speech delivered January 15, 1887: "We have got at this moment the best and cheapest railroad service on the face of the earth, with all its inconveniences, with all its imperfec-

tions. * * * * But we have got, as the statistics show, at this moment, the best, cheapest, most reliable, most convenient railroad service on the face of the globe." It is safe to say that statistics show nothing of the kind, since no statistics have ever been collected which would prove either this statement or its opposite. In certain respects we are undoubtedly ahead, as, indeed, to judge from our advantages, we should be in all. As to cheapness, the case is by no means clearly made out. But suppose, for sake of argument, we grant it; yet, when we consider the comparative cost of construction of our American railroads—not exceeding one-half and usually not one-third that of foreign roads, it would be a sorry case indeed if our rates were not lower than they are in Europe. It is pretty plain that they are not so low as they should be. In many instances, the public authorities granted money and land enough to construct and stock the road. Such roads should be carrying freight and passengers for the mere cost of moving them. Mr. Poor said in 1885 that the actual cost in money of all the roads in the United States did not exceed \$3,787,000,000, and that the fictitious capitalization was \$3,708,000,000. The net earnings for the year 1883 were \$336,911,884, being about nine per cent. of their cost. Mr. Adams, before the committee on the Pacific Railroads, said that the investments the Union Pacific Road had made in its branches had yielded between ten and eleven per cent. annually. A reduction in the rates from the West to Boston within twenty years from 3.7 cents per ton per mile to .83 of one cent per ton per mile seems to be an enormous reduction. But when we

take into consideration the great reduction in operating expenses brought about by the new inventions, the great decrease in cost per ton per mile effected by growth of traffic, and the subsidies granted to the railroads in many different forms, our wonder is not that long distance rates have fallen so much, but that local rates have been kept so high.

We need, above all things, some carefully collated statistics covering the whole field of railroad management, which should show us exactly the cost of constructing the roads, the subsidies granted, the fall in cost of service, etc., in order to ascertain exactly what we ought to have expected from the railroads. Such comparisons as Mr. Atkinson's, in which he makes out that the railroads have saved us \$800,000,000 in one year, are, of course, absolutely good for nothing, so far as this point is concerned. By the same method of reasoning he could make out that the railroads save us every year a sum more than equal to our whole national wealth, as compared with the time when men and women transported all the wealth of society on their backs! It is like reasoning as to what our wealth will be in 2000 A. D., by reckoning out what a penny at compound interest would have amounted to if it had been invested at the birth of Christ, and then multiplying that by the number of pence now in existence.

In some points we are certainly inferior to foreign railway systems. We have no passenger train between New York and Boston, for example, which can, by any stretch of language, be called a fast train. The famous Chicago Limited sinks to the level of a slow train after it gets beyond Pittsburgh, and most of the express trains between New York and

Philadelphia—by all odds for the distance the fastest service in the United States—are by no means “lightning flyers,” while the so-called “lightning express” on the Western roads are very fast indeed, if they average thirty miles an hour.

The following facts in regard to the Illinois Central Railroad are very *apropos* in this connection. See *Congressional Globe*—

“ILLINOIS CENTRAL RAILWAY.

“The Illinois Central Railroad has been peculiarly successful as an investment to its owners. There have been several ‘distributions of stock’ pro rata among the stockholders, and, in addition to the land grant, amounting to 2,595,000 acres, the company had realized on the 1st of January, 1873, in sales and advance interest, the munificent sum of \$24,824,333.33, or for the whole length of the road (705 miles) an average of \$35,211 per mile. In October, 1858, and January, 1862, dividends were paid in scrip, since converted into stock, to the amount of \$1,772,270. And in August, 1865, there was a ‘distribution of stock’ to the amount of ten per centum, amounting to \$2,119,631. And in August, 1868, there was an eight per cent. distribution, amounting to \$1,881,100. To recapitulate, the stock, waterings and land subsidy were as follows:

Total waterings (as above).....	\$5,773,301 00
Sales of land, including advance interest.....	24,825,333 33
Total waterings and subsidy.....	30,597,634 33
Total waterings and subsidy, per mile.....	43,400 89

“The total cost of construction, as reported by the company, January 1, 1873, amounted to \$34,061,196.56, being an average cost per mile of \$48,331.75. If we deduct from this latter sum the amount of stock waterings and subsidies per mile, it will leave but \$4,930.86 as the actual sum per mile that the owners of the Illinois Central Railroad have expended over and above their receipts in the building and equipment of their road! These estimates do not include the value of the unsold lands of the company. On the 1st of January, 1873, there remained of the land grant, not sold, 344,368 acres, worth perhaps \$15 per acre, or the sum of \$5,165,520. This amount should be added to the sum already realized for the sales of land, including advanced interest. The total watered stock and land grant would then aggregate the enormous sum of \$35,763,154.33! This sum exceeds the whole cost of construction, as reported by

the company, by the sum of \$1,701,957.77. Virtually, then, the state of Illinois and the General Government have given the Illinois Central Railroad Company a line of road 705 miles in length and a bonus of nearly \$2,000,000."

V.

Those persons in this country who have discussed the place of canals in the transportation system, have fixed their eyes chiefly on their function as controllers of railroad rates, *i. e.*, as permanent regulators of railroad competition. This is, of course, an important function, and it is natural that it should seem the most important one in this country, where the railroads have made it a permanent object to get control of the canals, and then fill them up or let them go to ruin.

But it is by no means the only, nor in a properly organized system of transportation the most important, function. This is now clearly perceived by German and French engineers and economists. The German government, though it is undoubtedly rapidly approaching a time when it will practically control the whole railway system of the Empire, is giving much attention to this question of canals. The Prussian government, which now dominates the entire railway policy of Prussia, is doing the same thing.

Just exactly where the line will be drawn, between canal and railway, it is, of course, difficult to say, but it is clearly the view of eminent authorities that there is a certain combination of the two in which the canal can transport one portion of the traffic and the railroad the other, at a much lower rate than the railroad can do the whole of it, and this is the combination which they are seeking.

This is a system of combination, not competition, and will probably be the ultimate form of organization.

No large country in the world could be so easily supplied with an extensive network of water ways as the portion of the United States which lies to the east of the Mississippi, and it is hardly probable that the system of internal improvements began over fifty years ago will be allowed permanently to remain in its present state.

The importance which many of our most prominent thinkers assign to the canal as a regulator of railway charges appears from the testimony collected on this point by the Cullom committee.

Mr. Albert Fink, a most capable authority, testified that under ordinary circumstances, the Lakes, the Erie Canal and the Mississippi River, are the great regulators of railroad transportation charges.

Mr. Simon Sterne held that the rate of charges on the Erie Canal largely determines the railway rate all the year round throughout the United States. The rate from New York to Chicago is substantially the pattern rate for charges throughout the country, and that rate is largely fixed by competition with the canal.

Mr. F. B. Thurber testified to the same effect, and quoted from the Hepbern Committee Report the following passage :

“The cost of water transportation from Chicago to New York determines the rate of rail transportation, and the rate of rail transportation from Chicago to New York is the base line upon which railroad rates are determined and fixed throughout the country. The rates, by agreement of the principal railroads of the country, from all points in the West to the seaboard, are made a certain percentage of the Chicago rate. Thus Cincinnati is 87 per cent. of the

Chicago rate; St. Louis 116 per cent.; Kansas City 146 per cent.; Louisville 96 per cent.," etc., etc.

Canals, in his opinion, should be modernized. For twenty-five or thirty years they have remained just as they were. While enormous improvements have been made in our railroad transportation in the last twenty years, little or no improvement has been made in our system of water ways. This is doubtless largely to be attributed to the adverse influence of railroad corporations in legislation. In Pennsylvania and other states they have bought up the canals and abolished them.

William Brass, of Chicago, in a memorial prepared in 1885, stated that the all water transit between Chicago and New York, instead of being seventeen and twenty and even twenty-five cents, as a few years ago, now rules at about six cents; sometimes a fraction above, and occasionally a small fraction below that figure. In summer the all rail freights per bushel are generally a fraction above those of water, depending upon competition and the demand for export; but in winter the rates average from twelve to twenty-one cents per bushel. No comment is needed. Coal was carried at an average charge for the season of 1884, from Erie and Buffalo to Chicago, about one hundred miles, for sixty-four cents per ton; thence to the Mississippi river, two hundred miles, the charge was two dollars; for the next one hundred miles it mounts up to four dollars per ton from Chicago, and in Western Iowa it runs up to a much higher figure. The freight on a bushel of wheat from Northern Iowa to Chicago, being some four hundred miles, ranged for the season from 10.8 cents to 16.8, the higher

rate being more than the rate charged for transporting it from Chicago to Liverpool, more than four thousand miles.

The same thing was noticed in connection with the Illinois railroads, in competition with the Illinois river canal. They charged less than one-half the ordinary rates, at all competing points. The following table, taken from Illinois Report for 1884, gives average freight charges per bushel for transportation of wheat from Chicago to New York, since the year 1868, and canal tolls :

CALENDAR YEAR.	By lake and canal.*	By lake and rail.	By all rail.	Canal Tolls.
	Cents.	Cents.	Cents.	Cents.
1868.....	24.54	29.0	42.6	6.21
1869.....	23.12	25.0	35.1	6.21
1870.....	17.10	22.0	33.3	3.10
1871.....	20.24	25.0	31.0	3.10
1872.....	24.50	28.0	33.5	3.10
1873.....	19.19	26.9	33.2	3.10
1874.....	14.10	16.9	28.7	3.10
1875.....	11.43	14.6	24.1	2.07
1876.....	9.58	11.8	16.5	2.07
1877.....	11.24	15.8	20.3	1.03
1878.....	9.15	11.4	17.7	1.03
1879.....	11.60	13.3	17.3	1.03
1880.....	12.27	15.7	19.7	1.03
1881.....	8.19	10.4	14.4	1.03
1882.....	7.89	10.9	14.6	1.03
1883.....	8.40	11.5	16.5
1884.....	6.60	9.75	13.0

* Including Buffalo transfer charges.

VI.

The chief features of this bill are as follows :

All railways engaged in interstate traffic are subject to its provisions. Personal discriminations are absolutely forbidden. A must not be charged more or less than B for exactly similar services. No unreasonable preference or advantage shall be given

to any person, corporation, locality or kind of traffic. No railroad shall charge any greater compensation in the aggregate for transportation over a shorter distance than over a longer, the shorter being in the same direction, and included within the longer. Pooling of freight and passenger traffic or earnings is absolutely forbidden. Publicity of rates, fares and charges for transportation is prescribed, each company being required to post such rates and fares in every depot and station along its lines. No increase in such rates and fares shall be allowed without ten days' notice. All companies are bound to afford reasonable, proper and equal facilities for the interchange of traffic between their respective lines.

A commission is provided for, whose business it is to investigate all complaints, watch over the enforcement of the law, obtain and report to Congress full returns as to the business of the railroads, etc. It has power to suspend the "long and short haul" clause given above, and has full authority to call for books, accounts, contracts and other matters necessary to enable it to judge as to whether the railroad is complying with the law or not. Violations of the law is a public matter, which the public officials must prosecute on account of the government.

A mere glance is sufficient to show that a very decided step has been taken in the direction of railroad regulation. It will now be possible to get at many facts of the railway traffic which hitherto have been practically a sealed book. Those abuses which depend on secrecy for their existence will ultimately be greatly diminished, and to a large extent will disappear. It will then be possible to

fix public attention upon the evils, and many of them may, and doubtless will be, remedied.

VII.

Mr. Morgan joined issue boldly on the very questions of dispute, also as will be seen from the following extract from a speech in the Senate, January 15, 1887:

"You go further; you overstep the bounds of the regulation of State commerce, and you take hold of the power to contract, and you say to men, 'You shall not contract thus and so,' though the common law of England and the United States says that you may, and that the contract is just and right. You trespass beyond the boundaries and invade the states, and say to the citizens of the states, 'You shall not contract in your own states and in your own corporations for the transportation of your freight beyond your state; we limit you in your power to contract by forbidding the railroad companies to contract with you, except upon certain terms that we prescribe.' And while you, in your anxiety to meet what is supposed to be a very popular demand, thus transgress the boundaries of your own jurisdiction, you invade some of the most sacred liberties that belong to men under the Constitution of the United States.

"I have a perfect right, if I have got 100,000 tons of iron to ship from Birmingham, Alabama, to Cincinnati, or to Chicago, to say to a particular railroad company, 'I will give you all my patronage if you give me a rate upon this below the common rate of transportation,' and that railroad company has a right to give me that contract, because I am a large contributor to its prosperity. Another comes along with ten tons of iron and offers to this railroad company that it shall carry his ten tons at the same rate as the other man's. The company says, 'I can not afford to do it.' 'Why can you not afford to do it?' 'Because I am carrying this iron for a man who furnishes me 100,000 tons;' precisely the same principle that would obtain in any mercantile house in New York.

"A merchant goes there and says, 'I want \$100,000 worth of your goods, and I have got the money to pay for them; I want to agree with you about the terms of our contract.' 'All right; I will deduct a little in your favor.' Another man comes and wants to buy fifty dollars worth of goods. The seller says he cannot afford to sell at the same rate; it may be a package of goods; he can not afford to do it. Now, will the law of Congress step in there and interfere?

No. Why? Because it is a transaction between individuals in a state. Why not interfere? What pretext have you for interfering in a contract between the iron shippers in Birmingham, Ala., and a railroad company? What right have you got to do it? No, sir, this bill goes very far beyond the powers of Congress as contended for by the gentlemen who advocate it, and it is a serious question as to the private right of a man to make a contract according to the advantages of his situation; and every man has a right to make his contract according to the advantages of his situation."

Senator Stanford differed still more radically from the prevailing sentiment, in regard to the nature of the railways, as appears in the following passage from a speech in the Senate, January 11, 1887:

"Railroad companies are organized under the general laws of the different states. They have no exclusive privileges. They are associations aided by these general laws—laws of which every citizen, or any number of citizens, may avail themselves equally with those forming the railroad company. In the mere fact of association they may exist entirely without the aid of the state. The association is as natural as it is for one man to call in his neighbors to help him raise his barn, or to roll a saw-log, or to do any business not inconsistent with the rights of others. The state gives, by virtue of the incorporation laws, nothing to the corporation. Whatever of capital or labor that is contributed to them is entirely private.

"The ownership of the labor and capital provided is private; as much so as the banker's ownership of his money, the farmer's ownership of his farm, the teamster's ownership of his team, and so on.

"It is private labor that builds the railroad from the first shovelful of dirt that is thrown until the last spike is driven and the road is ready for business; and then, when it is ready to operate, it is all the product of individual or private property.

"But some will say the right of way was given. In regard to that I think there is much misapprehension. Those who desire to build a railroad, of course, must in some manner obtain the right of way on which to build it. They appeal to the state on the ground that the proposed investment is of a highly beneficial character to the public, and they ask the state to exercise its right of eminent domain in order that the road may be built. The state only can exercise the right of eminent domain for the benefit of the public, and then upon just compensation to be made to the owner for what-

ever is taken. The state could not take private property for the benefit of A, B, C, D, E, F, and others.

“Now, up to this time everything in the railroad has come from private sources, and the labor belongs to the individuals as much as the labor of the man who tills a farm.

“Control is the essence of ownership. The value of the property is its income-producing quality. This bill strikes at the control, and directly affects the income-producing capacity of the properties. Now, if the investment is legitimate, if its nature is so highly beneficial that the state can do, to aid its construction, what it could not do for the establishment of a factory or any other legitimate business, wherein is the reason for the interference with the values and the control of this property? No monopoly is given to it; it interferes with no rights previously existing, and is never used except when it offers advantages to the shipper or traveler superior to those existing before. If it is a monopoly it is only a beneficent one, cheapening and facilitating travel and commerce.”